REMARKS

In the Office Action dated August 12, 2003, claims 1-18 were presented for examination. Claims 1-18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Ashcroft et al.*, U.S. Patent No. 6,460,144.

Applicant wishes to thank the Examiner for the careful and thorough review and action on the merits in this application.

I.   **35 U.S.C. §103(a) - Obviousness in view of *Ashcroft et al.***

Claims 1-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Ashcroft et al.*, U.S. Patent No. 6,460,144.

Ashcroft et al. shows a computer system with multiple server nodes physically connected to a disk array (see Col. 2, lines 14-15), a system administration workstation, an archive server, and a magnetic tape drive. The archive server is physically connected to the disk array, see Col. 2, lines 30-31, and is physically connected to the magnetic tape drives 15, see Col. 2, lines 31-32. The disk array "consists of a large number of magnetic disk units, all of which are mirrored (duplexed) for resilience". Col. 2, lines 16-17. The data storage system of *Aschroft et al.* discloses multiple system disks and BVC disks all of which may be mirrored within the data storage 13. There is no teaching, suggestion, or motivation within *Ashcroft et al.* to implement plexes with a server machine to support communicating data between two server machines, as taught by Applicant.

Applicant's invention as shown in claims 1-18 functions on a different principle than that taught in *Ashcroft et al.* Applicant's invention teaches a first plex connected to a network device. The Examiner states on the bottom of page 2 and top of page 3 of the Office Action that *Ashcroft et al.* teaches a first plex as the archive server 14 and the second plex as the system disks 16. However, a plex is a conceptual medium by which you transfer data, and is commonly identified in the computer science field as a mirror. The archive server of *Aschcroft et al.* is not a plex, although it may have plexes therein. Rather, the archive server is a machine that archives

2.

disk data from disk 17 to tape drive 15. The archive server 14 has a physical connection to the data storage and a separate physical connection to the magnetic tape drive. Accordingly, the physical structure of Applicant is not taught by *Ashcroft et al.*

In order for the claimed invention to be obvious under 35 U.S.C. §103(a), the prior art must teach or suggest all claimed limitations presented by the claimed invention. "To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP §2143.03 (citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)). As mentioned above, there is no teaching, suggestion or motivation in the *Ashcroft et al.* for a first plex connected to a network device and a second plex connected to a data storage device. Accordingly, the cited prior art fails to teach or suggest all the claim limitations present in Applicant's claimed invention.

Furthermore, Applicant teaches directly communicating data from a source node to a target node. Applicant's invention teaches communication between server nodes, not communication between a server node and a data storage device. As per the Examiner's interpretation of *Ashcroft et al.*, communication occurs between a server and a storage device. Accordingly, *Ashcroft et al.* teaches away from Applicant's invention.

Finally, the Examiner notes that *Ashcroft et al.* does not disclose the amended portions of Applicant's claims, but that *Ashcroft et al.* does provide support for modifications. More specifically, the Examiner notes that the invention of *Ashcroft et al.* may be implemented in other operating systems. See Col. 4, lines 30-32. *Ashcroft et al.* discloses the operating system of the server machines as Microsoft NT. The selected operating system of *Ashcroft et al.* or other operating systems in a computer network environment generally include several layers in a program stack. These layers include a physical layer, a kernel layer, and a user layer. Applicant is claiming the communication of data across a kernel layer of an operating system. Applicant is not claiming a specific operating system. *Ashcroft et al.* has neither any motivation or desirability to directly communicate data from a kernel layer of a source node to a kernel layer of a target node. For it to be obvious to combine prior art references, the references must teach,

3

suggest, or <u>motivate</u> one with ordinary skill in the art to combine the references and create the claimed invention. It is well accepted that "[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." MPEP §2143.01. *Ashcroft et al.* teaches a mirroring of a disk array within a disk array. However, a disk array does not have an operating system as found in a server machine. As such, *Ashcroft et al.* does not teach a communication of data as taught by Applicant, nor would *Ashcroft et al.* gain anything by incorporating it's elements into Applicants' invention. The motivation for communication of data across the kernel layers of the server nodes is found in Applicant's invention, not in *Ashcroft et al.* Applicant respectfully disagrees with the Examiner's assertion regarding support for communication data across kernel layers of nodes in *Ashcroft et al.*, since there is no teaching, suggestion, motivation therein. Accordingly, Applicant respectfully requests removal of the rejection, and allowance of the pending claims.

In light of the foregoing amendments and remarks, all of the claims now presented are in condition for allowance, and Applicants respectfully request that the outstanding rejections be withdrawn and this application be passed to issue.

The Examiner is urged to call the undersigned at the number listed below if, in the Examiner's opinion, such a phone conference would aid in furthering the prosecution of this application.

Respectfully submitted,
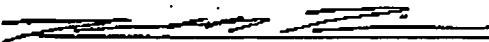
Rochelle Lieberman
Registration No. 39,276

Lieberman & Brandsdorfer, LLC
12221 McDonald Chapel Drive
Gaithersburg, MD 20878
Phone: (301) 948-7775
Fax: (301) 948-7774
email: rocky@legalplanner.com
Date: October 10, 2003

RECEIVED
CENTRAL FAX CENTER

OCT 1 4 2003

OFFICIAL

The transmission ends with this page

4